Editor's note: Reconsideration denied by order dated Sept. 30, 1981; appealed - aff'd Civ.No. A-81-458 (D.Alaska Oct. 7, 1982), aff'd in part, rev'd in part, remanded No. 82-3605 (9th Cir. April 2, 1985), 756 F.2d 1379; decision vacated (on judicial remand), remanded to BLM by order dated June 26, 1985 -- See 55 IBLA 231A below.

STUART GRANT RAMSTAD

IBLA 80-717 Decided June 18, 1981

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting application to purchase trade and manufacturing site and denying request for equitable adjudication. AA 24793.

Affirmed.

1. Alaska: Generally -- Alaska: Possessory Rights -- Alaska: Trade and Manufacturing Sites -- Withdrawals and Reservations: Generally

   A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

2. Alaska: Generally -- Alaska: Trade and Manufacturing Sites -- Equitable Adjudication: Generally -- Equitable Adjudication: Substantial Compliance

   Equitable adjudication of an application to purchase a trade manufacturing site claim filed at least 12 years after the land has been withdrawn must be denied as substantial compliance with the law has not been made where neither occupancy of the site prior to the withdrawal nor after the withdrawal could validly be considered under the law.

APPEARANCES: Eugene F. Wiles, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated May 14, 1980, by the Alaska State Office, Bureau of Land Management (BLM), which rejected an application to purchase a Trade and Manufacturing (T & M) site and denied a request for equitable adjudication.

The claim contains approximately 80 acres and is located in the unsurveyed W 1/2 SW 1/4 of sec. 27 and the SE 1/4 of sec. 28, T. 5 N., R. 29 W., Seward meridian. The applicant, a registered guide, operates a hunting and fishing lodge on the site which has several cabins and other improvements with an estimated value of $200,000. The application to purchase was filed on March 1, 1979, pursuant to section 10 of the Act of May 14, 1898, as amended, and the Act of April 29, 1950, 43 U.S.C. § 687a (1976), repealed by section 703(a) of the Federal Land Policy and Management Act of 1976, P.L. 94-579, 90 Stat. 2789, effective October 21, 1986.

43 U.S.C. § 687a (1976), in part, provides:

> Any citizen of the United States twenty-one years of age, or any association of such citizens, or any corporation incorporated under the laws of the United States or of any State or Territory authorized on May 14, 1898, by law to hold lands in the Territories, thereafter in the possession of and occupying public lands in Alaska in good faith for the purposes of trade, manufacture, or other productive industry, may each purchase one claim only not exceeding eighty acres of such land for any one person, association, or corporation, at $2.50 per acre, upon submission of proof that said area embraces improvements of the claimant and is needed in the prosecution of such trade, manufacture, or other productive industry * * *.

Further, 43 U.S.C. § 687a-1 (1976), states:

> All qualified persons, associations, or corporations now holding or hereafter initiating claims subject to the provisions of section 687a of this title, shall file a notice describing such claim in the manner specified by section 270 of this title in the United States land office for this district in which the land is situated within ninety days from April 29, 1950 or within ninety days from the date of the initiation of the claim, whichever is later. Unless such notice is filed in the proper district land office within the time prescribed the claimant shall not be given credit for the occupancy maintained in the claim prior to the filing of (1) a notice of the

> claim in the proper district land office, or (2) an application to purchase, whichever is earlier. Application to purchase claims, along with the required proof or showing, must be filed within five years after the filing of the notice of claim under this section.
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> One of the implementing regulations, 43 CFR 2562.1, states in part:
>
> (a) Any qualified person * * * initiating a claim on or after April 29, 1950, under section 10 of the act of May 14, 1898, by the occupation of vacant and unreserved public land in Alaska for the purposes of trade, manufacture, or other productive industry, must file notice of the claim * * * in the proper office * * * within 90 days after such initiation. Where on April 29, 1950, such a claim was held by a qualified person * * * the claimant must file notice of the claim in the proper office, within 90 days from that date.
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> * * * * * * *
>
> (c) Unless a notice of the claim is filed within the time prescribed in paragraph (a) of this section no credit shall be given for occupancy of the site prior to filing of notice in the proper office, or application to purchase, whichever is earlier.

The applicant claims occupancy of the land from December 25, 1962, but did not file the notice required by the above statute and regulation. Accordingly, in the decision appealed from, BLM gave appellant no credit for occupancy prior to March 1, 1979, the date on which he filed his application to purchase.

A further regulation, 43 CFR 2562.3(d)(2), requires that an application to purchase show: "That no portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved and unappropriated by any person claiming the same other than applicant." With reference to this regulation, the decision states that the land filed on by appellant was withdrawn by the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. § 1601 (1976), and that a selection application, AA-11153-20, was filed on December 17, 1975, which included the lands sought by appellant. According to BLM, appellant had no valid existing rights antedating this withdrawal because he failed to file a notice of location and did not file his application to purchase until March 1, 1979. BLM also found that appellant's claim was not subject to equitable adjudication under 43 CFR 1871.1-1 because he had not shown substantial compliance with the law. We agree.

On appeal to the Board appellant asserts in an affidavit that he attempted to file his notice of location on April 15, 1967, but was told by BLM personnel that the lands had been withdrawn in accordance with the Iliamna-Cook Multiple Use Classification. 1/ In his statement of reasons appellant quotes from a BLM letter dated December 31, 1968, advising him to furnish evidence of his commercial use. In response, appellant states that he went to the BLM office but was again advised that the lands were closed to entry. By letter dated February 24, 1969, BLM advised appellant that it had not yet received the data requested earlier and allowed him an additional 30 days to comply. 2/ Appellant states that he did not respond to this letter because he was advised at the BLM office that he could not file on the land and perfect his entry. Appellant asserts that he continued to make inquiries, all to no avail, and was finally told in 1979 to submit an application for purchase and request equitable adjudication.

Both the 1967 and 1971 withdrawals operated subject to valid existing rights. Appellant contends that he acquired a valid existing right even though he did not comply with the filing requirements of 43 U.S.C. § 687a-1 (1976). He asserts further that the Board has previously misconstrued or misapplied this provision in earlier decisions citing Edwin William Seiler, 16 IBLA 352 (1974), and Kennecott Copper Corporation, 8 IBLA 21 (1972), and that the facts herein are within the purview of Edwin William Seiler (On Reconsideration), 20 IBLA 221 (1975), and James Milton Cann, 16 IBLA 374 (1974).

Finally, appellant contends he is entitled to equitable adjudication.

[1] The sole issue on appeal is whether appellant acquired a valid existing right excepted from the withdrawal where he failed to complete the filing requirements of the statute and regulations. We conclude he did not. When appellant failed to comply with the 90-day filing provision the statute operated to preclude recognition of credit for occupancy of the site prior to filing either a notice of location or application to purchase. When appellant filed his application to purchase on March 1, 1979, the statute dictated that no credit for prior occupancy be given and essentially considered the date of filing to be the date of entry. By March 1, 1979, the land was unavailable for entry under 43 U.S.C. § 687a (1976). Similarly,

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1/ The decision does not mention this withdrawal but the file contains the Federal Register notice, 32 FR 3833 (Mar. 8, 1967), which served to segregate the land from disposal under the public land laws as of Mar. 8, 1967, subject to valid existing rights. Multiple Use Classification AA 818 was subsequently published on Oct. 28, 1967, 32 FR 14971.

2/ Appellant has not attached copies of these letters to his statement of reasons and there are not copies in the file.

when appellant attempted to file his notice of location in April of 1967, the fact that the land had been withdrawn from appropriation in March of 1967 precluded his entry on that date.

To support his claim of a valid existing right excepted from the withdrawal, he quotes verbatim the statement of reasons submitted in Seiler, supra, and Kennecott, supra, which were considered by the Board and rejected when we affirmed those adverse decisions. Appellant takes exception to those decisions but offers no supporting authority to show how those decisions miscontrue the law. 3/

In Kennecott, supra, the appellant, like appellant here, never filed a notice of location, and filed an application to purchase after the land was withdrawn subject to valid existing rights. The Kennecott Corporation contended that the site was excepted by the language of the withdrawal as a valid existing right. After analyzing the statute and appellant's arguments this Board said:

We conclude that we must follow the mandate expressed in the Act of April 29, 1950, not to give any credit for the occupancy of the appellant prior to the time it filed its purchase application. Therefore, its occupancy of the tract prior to the withdrawal cannot be considered a "valid existing right" excepting the tract from the withdrawal. Russian-American Packing Co. v. United States, supra. [Kennecott Copper Corporation, supra at 31.]

In Seiler, supra, the Board affirmed a BLM decision which rejected an application to purchase a T & M site where the site had been withdrawn from appropriation prior to filing the application to purchase. The Seiler decision considered the legal effect to be given occupancy initiated and continued under defective notices of location. We said:

As was stated in Kennecott,

* * * The provisions of the Act [of April 29, 1950, 43 U.S.C. § 687a-1 (1970), which requires

3/ Appellant asserts that the Board has ignored the holdings in PLO Cir. 1348, 55 I.D. 226 (1935), the Solicitor's Opinion, 55 I.D. 205 (1935), and Kitty Kaigelak, F-12086 (June 16, 1970), which conclude that settlement claims were recognized as excepted from withdrawals which were subject to valid existing rights. We have dealt with this precise argument in considering the application of 43 U.S.C. § 687a-1 (1976) and rejected it. In Edwin William Seiler, supra, we stated that the purpose of the Act of Apr. 29, 1950, 43 U.S.C. § 681a-1 (1970), would be thwarted "if a claimant could present his application to purchase long after a withdrawal had been in effect claiming his occupancy precluded the withdrawal from being effective even though he gave no notice to the Bureau as required." (Kennecott Copper Corporation, supra at 28-29, 79 I.D. 639-40.)

> the filing of a location notice as a prerequisite for credit for occupancy], in amending the Trade and Manufacturing Site Act established certain conditions and requirements whereby the United States would recognize occupancy for trade and manufacturing site purposes. The failure of the appellant to meet these conditions brought into operation the consequences of the lack of fulfillment of the condition, i.e., that occupancy prior to the filing of a notice of location or application to purchase could not be considered. * * *
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> Kennecott Copper Corporation, supra at 8 IBLA 29, 79 I.D. 640.

Mere occupancy of land without a claimant's taking the steps required by law to protect his occupancy cannot establish a valid existing right protected from the withdrawal. Rene P. Lamoureux, 39 IBLA 36 (1979); William G. Fairbanks, 22 IBLA 255 (1975); Knute P. Lind, 21 IBLA 81 (1975); Kennecott Copper Corporation, 8 IBLA 21, 79 I.D. 636 (1972). As there was no valid existing right at the time of the withdrawal, the withdrawal attached to the land and an application to purchase filed after the withdrawal was properly rejected for that reason. Id.; Eugene M. Will, 15 IBLA 378 (1974).

Alternatively, appellant urges that he falls within the rule of Edwin William Seiler (On Reconsideration), 20 IBLA 221 (1975), and James Milton Cann, 16 IBLA 374 (1974). Specifically, he states:

> In those cases, the Board held that the applicant could be given credit for occupancy within 90 days of an attempted filing of a notice of location. Accordingly, if this Board should not reverse the BLM's decision of May 14, 1980 for the reasons set forth above, appellant still established a valid existing right protected against the withdrawal of the subject land. Mr. Ramstad's affidavit establishes that he repeatedly returned to the BLM for advice, but was always told that his T & M site was closed to location. Given these facts, Mr. Ramstad is entitled to have his case adjudicated on its merits. [Statement of Reason at 31.]

Appellant fails to distinguish critical differences. We set aside and remanded the BLM decision in Cann because the appellant alleged that BLM refused to accept his filings after the effective date of the withdrawal but within 90 days of his initiating occupancy. The Board observed at 327:

> A close reading of both the statute and the appropriate regulations indicates that a claim may be properly initiated by occupying and constructing improvements on

> the claims. No credit, however, may be given for such initiation if it occurs more than 90 days prior to the time the notice of location is filed in the appropriate land office. The alleged action of the Alaska State Office in refusing to accept appellant's notices of location could have stemmed from the fact that the land had been withdrawn from entry under the law pertaining to headquarters and trade and manufacturing sites, 43 U.S.C. § 687a (1970). But in this case appellant has asserted that occupancy and construction of improvements began before the withdrawal of the lands and within the 90-day filing period provided for in the Act and the regulations. Consequently, if appellant's claims were properly initiated before the withdrawal, credit should have been given for occupancy up to the date of withdrawal, notwithstanding the fact that no claim could have been initiated after the withdrawal.

The appellant in Cann, therefore, was entitled to an opportunity to demonstrate to BLM that he attempted to file his notice of location and did initiate occupancy within 90 days of filing of his notice and prior to the withdrawal.

In Seiler (On Reconsideration), the appellant submitted for consideration new material which the Board concluded, if documented, would bring him within the rule of Cann. In this case, appellant filed his application to purchase, and sought to file his notice of location more than 90 days after initiating his claim. Clearly, the rule announced in Cann is inapplicable.

Finally, appellant contends, "Given appellant's substantive compliance with the law, equitable adjudication should be applied." (Statement of Reasons at 29).

> 1/ 43 CFR 1871.1-1 provides that the following cases are subject to equitable adjudication:
>
> > (a) Substantial compliance: All classes of entries in connection with which the law has been substantially complied with and legal notice given, but the necessary citizenship status not acquired, sufficient proof not submitted, or full compliance with the law not effected within the period authorized by law, or where the final proof testimony, or affidavits of the entryman or claimant were executed before an officer duly authorized to administer oaths but outside the county or land district, in which the land is situated, and special cases deemed proper by the Director, Bureau of Land Management, where the error or informality is

> satisfactorily explained as being the result of ignorance, mistake, or some obstacle over which the party had not control, or any other sufficient reason not indicating bad faith there being no lawful adverse claim.

Cases where equitable adjudication has been applied to permit the acceptance of a purchase application filed after the 5-year period required by the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), have crucial factual differences from the instant case. E.g., Carla D. Botner, 7 IBLA 335 (1972); Alvin R. Aspelund, 7 IBLA 165 (1972); Richard Lee Ferrens, 7 IBLA 133 (1972); Elizabeth Hickethier, 6 IBLA 306 (1972). In those cases a notice of location was filed prior to a withdrawal of the land. Therefore, the occupancy prior to the withdrawal could be considered as excepting the land from the withdrawal and there was substantial compliance with the law prior to the withdrawal. Furthermore, the withdrawal in those cases had been revoked at the time equitable consideration of the purchase application was made. Neither of those pertinent considerations are applicable here. We are unaware of any case where there have not been recognized rights of occupancy established prior to a withdrawal for the Department to apply equitable adjudication in order to accept the late filing of a purchase application. Here the purchase application was filed at least 12 years after the land had been withdrawn. 4/ Occupancy prior to withdrawal and occupancy after the withdrawal cannot be validly considered under the law. Therefore, there could not be substantial compliance with the law. To rule otherwise would completely negate the effect of the Act of April 29, 1950, and of a withdrawal. Cf. Eugene M. Will, 15 IBLA 378 (1974).

We recognize the implication of this decision relative to appellant's investment of time and money. We must also point out, however, that appellant is not an innocent victim of circumstances. After he had notice in 1967 that his claim was defective he continued to develop the site. Rather than comply with the area manager's request to submit evidence to substantiate the claim and attempt to resolve the matter, appellant proceeded to expend more time and money in placing improvements on his site. Such expenditure could not better his position, particularly after notice of the defects to his claim. For information purposes, we note that the BLM decision at page 2 states: "Since the land has been selected by Cook Inlet Region, Inc., it may be possible for the applicant to receive title to the land from the Cook Inlet once the lands are conveyed to them." This statement suggests that the provisions of 43 U.S.C. § 1613(c) (1976) may afford appellant some relief.

4/ Neither is the 1967 notice of location acceptable. A notice of location is not the equivalent of a purchase application. It is a mere notice that the person has gone upon the land and nothing more. The equitable adjudication authority, therefore, is not appropriate and may not be applied to permit the filing of such a notice after land has been withdrawn. Rene P. Lamoureax, 20 IBLA 243, 246 (1975).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

June 26, 1985

IBLA 80-717	:	AA-24793
55 IBLA 223 (1981)	:	
	:	Trade and Manufacturing Site
STUART GRANT RAMSTAD	:	
(ON JUDICIAL REMAND)	:	Decision Vacated, Case Remanded

ORDER

In Stuart Grant Ramstad, 55 IBLA 223 (1981) this Board affirmed a decision of the Alaska State Office, Bureau of Land Management (BLM) rejecting appellant's application to purchase a trade and manufacturing site and denying his request for equitable adjudication.
The Board's decision was affirmed by the District Court of the District of Alaska on October 6, 1982, in Ramstad v. Watt, Civ. No. A-81-450. Subsequently, in Ramstad v. Hodel, 756 F.2nd 1379 (1985), the United States Court of Appeals for the Ninth Circuit reversed the judgment of the District Court to the extent it denied appellant's request for equitable adjudication, and remanded the case for further proceedings.

On June 24, 1985, pursuant to 43 CFR 4.29, the Office of the Regional Solicitor, Alaska Region, on behalf of BLM, submitted a Report of and Petition for Remand in the above-captioned appeal, requesting the Board to remand the matter to BLM, to allow BLM to consider appellant's request for equitable adjudication.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case is remanded to BLM for further proceedings consistent with the opinion of the Ninth Circuit.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

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